

HANSON PROPERTIES, INC.

IBLA 83-563, 83-572

Decided July 28, 1983

Appeals from decisions of Alaska State Office, Bureau of Land Management, declaring mining claims null and void ab initio. AA 40198 through AA 40241, AA 40242, AA 40247, and AA 40252.

Affirmed, as modified.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

APPEARANCES: Joseph J. Perkins, Esq., Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Hanson Properties, Inc., has appealed the Alaska State Office, Bureau of Land Management (BLM), decisions of March 18, 1983, which rejected placer mining claim location notices and declared the claims null and void ab initio because the lands involved were segregated from operation of the mining laws by Native allotment application F 16968 in sec. 2, T. 16 S., R. 75 W., Seward meridian, or the lands in T. 15 S., R. 75 W., were withdrawn December 18, 1971, from any appropriation under the mining laws under section 11, Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1610 (1976). 1/ In addition, BLM stated that the JCT #3 claim conflicts with Regional Historical Place Selection application AA 10365; JCT #9 claim conflicts with Regional Cemetery Site application AA 10386; JCT #29 and #33 claims conflict with Native allotment application F 17422 and Regional Historical Place Selection application AA 10364; JCT #37 claim conflicts with Native allotment application F 17422; and JCT #41 claim conflicts with Native allotment application F 16968.

Appellant concedes that the JCT #45, #50, and #55 in sec. 2, T. 16 S., R. 75 W., are null and void ab initio if, but only if, Native allotment application F 16968 was properly filed and pending before the Department of the

1/ The claims involved in the two decisions are JCT #1 through JCT #44 in T. 15., R. 75 W.; and JCT #45, JCT #50 and JCT #55 in sec. 2, T. 16 S., R. 75 W. The claims were located in April 1980.

Interior on December 18, 1971. Appellant requests the Board to call upon BLM for adequate proof that Native allotment application F 16968 was timely filed and pending before the Department on December 18, 1971. As to the claims in T. 15 S., R. 75 W., appellant concedes that the JCT #3, #9, #29, and #33 are null and void ab initio where they conflict with the Regional Historical Site Selection applications or the Regional Cemetery Site application. Appellant agrees that the JCT #29, #33, #37, and #41 claims are null and void ab initio to the extent they conflict with Native allotment applications F 16968 and F 17422 if, but only if, the Native allotments applications were properly filed and pending before the Department on December 18, 1971. Appellant disagrees with the decision declaring the JCT #1 through JCT #44 claims null and void ab initio on the basis of the alleged continued applicability of the statutory withdrawal made by section 11(a)(1) of ANCSA because appellant contends the withdrawal made by section 11(a)(1) of ANCSA expired December 18, 1975. This contention is correct, and as the claims were located in 1980, the cited withdrawal does not support the BLM decision. Appellant concedes, however, that the withdrawal made by Public Land Order (PLO) No. 5561, 40 FR 58857 (Dec. 19, 1975), as amended, may mandate the same conclusions as expressed in the BLM decision.

Examination of the case files for Native allotment applications F 16968 and F 17422 discloses that application F 16968 bears the date of May 25, 1971, and F 17422 the date of November 2, 1970. After certification by the Bureau of Indian Affairs on March 22, and 27, 1972, respectively, the applications were filed with BLM on March 28, and 31, 1972, respectively.

The Bureau of Indian Affairs is an agency within the Department of the Interior. In a memorandum dated October 18, 1973, styled "Adjudication of Pending Alaska Native allotment applications" addressed to the Director, Bureau of Land Management, the Assistant Secretary, Land and Water Resources, stated as to "[p]ending before the Department on December 18, 1971"; "This phrase is interpreted as meaning that an application for a Native allotment must have been on file in any bureau, division, or agency of the Department of the Interior on or before December 18, 1971." See Nora L. Sanford, 43 IBLA 74 (1979). Accordingly, the Board is persuaded that the Native allotment applications, F 16968 and F 17422, were pending before the Bureau of Indian Affairs, an agency of the Department of the Interior, on December 18, 1971. Therefore, to the extent any of the claims at issue conflict with the lands described in those applications, the claims are null and void ab initio.

Section 11(a)(1) of ANCSA, 43 U.S.C. § 1610 (1976), provides that certain lands surrounding and adjacent to Native villages are withdrawn, subject to valid existing rights, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act. Section 22(h), 43 U.S.C. § 1621 (1976), provides that withdrawals made under the Act shall terminate within 4 years of December 18, 1971, provided that lands selected by village or regional corporations or by a Native group under section 1611 of the Act shall remain withdrawn until the land is conveyed pursuant to section 1613. It is not apparent from the record before us that any of the land within the subject mining claims are under application by a village or regional corporation. However, PLO 5561 of December 16, 1975, 40 FR 58857 (Dec. 19, 1975), further withdrew from appropriation under the public land laws, including the

mining laws, all of the lands previously withdrawn by section 11(a)(1) of ANCSA for the purpose of completing administration of the Act. The land embraced in the JCT #1 through #44 mining claims was withdrawn from operation of the mining laws in 1980 when the claims were located.

[1] A mining claim on lands previously withdrawn from appropriation under the mining laws is null and void ab initio. Lester M. Holt, 69 IBLA 180 (1982); Charles Degitz, 69 IBLA 145 (1982); J & B Mining Co., 69 IBLA 73 (1982); 66 IBLA 279 (1982); Ronald W. Ramm, 67 IBLA 32 (1982); Fairfield Mining Co., 66 IBLA 115 (1982).

Although the withdrawal effected by section 11 of ANCSA may have expired December 18, 1975, the withdrawal imposed by PLO 5561 of December 16, 1975, is still in effect, and militates against the validity of the subject mining claims. The conclusions in the BLM decision relating to JCT claims #1 through #44 are correct but for the wrong reason. The decision is modified to reflect the subject claims as null and void ab initio because the land was withdrawn from appropriation under the mining laws by PLO 5561 of December 16, 1975.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed as modified.

Douglas E. Henriques
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Edward W. Stuebing
Administrative Judge

